

REMARKS

The present amendment is in response to the Office Action dated April 16, 2010. Claims 29-33, 36-45, 47-50, 52-58, 67, and 69-76 are now present in this case. Claims have been 1-28, 34, 35, 46, 51, 59-66, and 68 have been canceled. Claims 29, 32, 33, 36-39, 42-44, 57, 58, and 67 are currently amended. No new claims have been added.

At the outset, the applicant wishes to note that the Office Action contains no rejection of claim 67 and does not address any rejection of claims 69-73. Because the Office Action is incomplete, the applicant is deprived of the opportunity to respond to the rejection. Accordingly, the applicant requests that the finality of the present Office Action be withdrawn so that the Examiner can provide a complete Office Action as required by Patent Office procedures. (See MPEP § 707.07).

Claim 76 is rejected under 35 U.S.C. § 112, second paragraph. The applicant respectfully traverses the rejection and requests reconsideration. The applicant respectfully requests clarification. The rejection of claim 76 on page 2 of the Office Action states that the claim is rejected under 35 U.S.C. § 112, second paragraph. On Pages 8-9 of the Office Action, claim 76 appears to be rejected under 35 U.S.C. § 112, sixth paragraph. Page 2 of the Office Action states that "the word 'means' is preceded by the word(s) 'for'." Based on this statement, the Examiner is asserting that the word "for" appears in front of the word "means." This is incorrect as claim 76 has no words preceding the word "means" in any of the claim elements. The Office Action further states, at page 2, that the "applicant is required to identify the type of means used in claim 76." Therefore, the applicant is unclear as to the nature of the rejection and respectfully requests clarification. Is the Examiner requesting that the applicant identify the specific structures in the specification corresponding to the claim elements?

Claims 29-33, 36-43, 76, and 69-76 stand rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 5,845,255 to Mayaud ("Mayaud"). The applicant respectfully traverses the rejection and requests reconsideration. In the prior Office Action, the applicant argued that Mayaud cannot disclose presenting "the subset

of records automatically jointly optimized," as recited in claim 29. In support of that contention, the applicant pointed out that Mayaud discloses presentation of a drug price list to allow the physician to use cost as a factor in the selection of a drug. While Mayaud discloses display of drug prices, it does not teach or suggest any automatic optimization based on prices. The physician manually selects the drug so there is no "automatic" optimization based on economic factors. Only after the physician manually selects the drug does the system of Mayaud check for allergy/drug interaction considerations. (See Figure 18 of Mayaud). Mayaud does not teach or suggest that cost (which may be a factor considered by the physician before the physician's initial manual selection of a drug) and allergy/drug interaction review (which occurs after drug selection) are jointly optimized since those two factors were independently considered. That is, cost is a factor considered by the physician before drug selection and independent of any allergy/drug interaction considerations. Furthermore, the allergy/drug interaction considerations are made after the drug selection and independent of any cost consideration. Thus, these two factors cannot be "jointly optimized" as recited in claim 29. Furthermore, the Office Action, at page 8, asserts that "The optimization is automatic by reason that it is performed with the assistance of a computer program." The applicant respectfully disagrees with this assertion. The computer has nothing to do with the drug selection based on cost except to display a price list. Any "optimization" of an economic parameter is manually performed by the physician selecting a drug if that drug is selected on the basis of cost. The physician must manually enter the drug selection into the computer system of Mayaud. Thus, the applicant respectfully asserts that any optimization of economic parameters is manually performed and is not automatically optimized merely because a computer displays a price list.

The Office Action further states, in response to previous arguments by the applicant, that the applicant's arguments "could be valid if the claims clearly disclose the drug selection is taking before or after as argued." (Office Action, page 8). The applicant has amended claim 29 to clarify that "following presentation of the automatically jointly optimized subset of records on the computer output device, receiving additional input data from the input device to accept or reject the presented

subset of records.” Mayaud does not teach or suggest a computer output device that displays “the subset of records jointly optimized based on the determined economic parameters, and the statistical risk” followed by “receiving additional input data from the input device to accept or reject the presented subset of records.” Thus, claim 29 is allowable over Mayaud. Claims 30-33, 36-41, and 74 are also allowable in view of the fact that they depend from claim 29 and further in view of the recitation in each of those claims.

Claim 42 is directed to a computer readable medium. Claim 42 has been amended to be in independent form, but incorporates elements of claim 29 and is allowable for the reasons discussed above with respect to claim 29. Claim 43 is allowable in view of the fact that it depends from claim 42 and further in view of the recitation within that claim.

The Office Action also rejects claims 69-76 under 35 U.S.C. § 102(e) as anticipated by Mayaud. As noted above, the Office Action does not provide any discussion as to the Examiner’s reasons for the rejection of dependent claims 69-73 and does not discuss claim 67 at all. The applicant further notes that claims 75-76 are included in the rejection under 35 U.S.C. § 102(e) over Mayaud. (See Office Action, page 3). The Office Action omits any discussion of these claims with respect to Mayaud. Because the applicant cannot respond to the rejection, the applicant respectfully requests the withdrawal of the finality of the present Office Action and reissue of a new Office Action that addresses all claims as required by the MPEP. The applicant further notes that claims 67 and 75 are both directed to techniques involving nutritional supplementation and nutritional supplementation records. The Office Action admits, at page 6, that “Mayaud is silent with respect to determining a set of records related to nutritional supplementation from an electronic database.” As such, it is believed that claims 67 and 75 cannot be rejected as anticipated by Mayaud. However, because these claims are not discussed at all in the present Office Action, the applicant is unable to present any discussion as to the patentability of these claims. For at least these reasons, the applicant respectfully requests that the finality of the present Office Action by withdrawn and a new Office Action issued that addresses all rejections.

Claims 44, 45, 47-50, and 52-58 are rejected under 35 U.S.C. § 103(a) as

unpatentable over the combination of Mayaud (U.S. Patent No. 5,845,255) in combination with U.S. Patent No. 5,866,428 to Kim et al. ("Kim"). The applicant respectfully traverses this rejection and requests reconsideration. In the previous amendment, the applicant pointed out that Kim is completely unrelated to dietary supplementation. Kim is directed to a chemistry invention for the determination of hemoglobin levels. The only mention of nutrition in Kim is to state that nutritional deficiencies sometimes cause anemia. (See Kim, column 1, lines 28-42). Nonetheless, the present Office Action asserts that "Kim discloses the determining of a set of records related to nutritional supplementation from an electronic database based on a classification of information therewithin and the user health parameter." (Office Action, page 6). Kim contains no such teaching. There is no record of nutritional supplementation in Kim or an electronic database from which records related to nutritional supplementation are derived. In the prior amendment, the applicant respectfully requested that the Examiner point to a specific section of Kim where such an electronic nutritional database is disclosed. The present Office Action does not respond to that request. The applicant believes that no such disclosure exists in Kim and again respectfully requests that the Examiner point to a specific location in Kim that discloses any records related to nutritional supplemental derived from an electronic database based on classification of information, as asserted by the Examiner. In the absence of such a disclosure by Kim, the applicant respectfully requests the allowance of claim 44. Claims 45, 47-50, and 52-56 are also allowable in view of the fact that they depend from claim 44 and further in view of the recitation in each of those claims.

Claim 57 is directed to a computer readable medium. Claim 57 has been amended to be in independent form, but incorporates elements of claim 44 and is allowable for the reasons discussed above with respect to claim 44. Claim 58 is allowable in view of the fact that it depends from claim 57 and further in view of the recitation within that claim.

In view of the above amendments and remarks, reconsideration of the subject application and its allowance are kindly requested. The applicant has made a good faith effort to place all claims in condition for allowance. If questions remain regarding the present application, the Examiner is invited to contact the undersigned at

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Respectfully submitted,
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